IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8834 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PREMKORBEN WD/O NATHUBHAI

Versus

SURAJRAM RATILAL BHATT

Appearance:

MR SN SHELAT for Petitioners

MR RM VIN for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 30/06/2000

ORAL JUDGEMENT

This petition under Article 227 of the Constitution is directed against judgment dated July 28, 1989 rendered by the Gujarat Revenue Tribunal in revision application TEN/BS/243/ 84 by which, the order dated November 29, 1982 passed by the Agricultural Lands Tribunal and Mamlatdar, holding that provisions of Section 2(8) (b)(i) read with Section 16 of the Bombay Tenancy and Agricultural Lands Act,1948 (`the Act'for short) are not applicable to the land in question admeasuring 85'x13' with existing superstructure thereon situated at Mandvi

as well as the order dated January 31,1984 passed by the Deputy Collector, Olpad Prant confirming the order of the Mamlatdar are upheld.

The respondent had filed Regular Civil Suit No. 13 of 1979 in the court of learned Civil Judge (Junior Division) seeking injunction against the petitioners as according to the respondent, the petitioners were trying unauthorisedly and unlawfully to enter the piece of land admeasuring 85'x 13' situated at Mandvi. The petitioners had raised a contention that they were tenants within the meaning of the Act . Accordingly, an issue was raised by the trial court and referred to the Agricultural Lands Tribunal and Mamlatdar as required by section 85A of the Act.The Mamlatdar to whom the reference was made heard the parties and concluded that the petitioners were not tenants of the land in question. Feeling aggrieved by the said order, the petitioners preferred Tenancy appeal No. 36 of 1982 before the Collector and the Deputy Collector who heard the appeal dismissed the same by his order dated January 31, 1984. The matter was thereafter carried by the petitioners before the Gujarat Revenue Tribunal by filing a revision application. The Tribunal also dismissed the revision application by judgment,dated July 28,1989,giving rise to the present petition.

Learned counsel for the petitioners has informed the court that the respondent has expired during the pendency of the petition and inspite of several reminders having been sent to the petitioners, neither names of heirs and legal representatives of the respondent are furnished nor other instructions are given in the matter. As the sole respondent in the petition has expired, I am of the view that the petition has abated and deserves to be disposed of accordingly.

Even otherwise on merits also, I find no substance in the submission that provisions of Section 2 (8)(b) (i) read with Sections 16 and 17 of the Act have been misconstrued by the Tribunal.No evidence was led by the petitioners to prove that they or their predecessors-in-title were tenants of the respondent in respect of his agricultural land.The evidence led by the petitioners does not establish that they are tenants of any agricultural land belonging to the respondent. Even in her deposition recorded before the competent authority, petitioner No.1 had not stated that she was tenant of the respondent in respect of any agricultural land, and for that matter, of any other landlord. The finding recorded by the Tribunal that the main dispute between the petitioners vis-a-vis the respondent is purely of civil nature with which the

tenancy court is not concerned, is eminently just and deserves to be upheld. In view of the decision of the Supreme Court in Mohd. Yunus vs. Mohmed Mustgaqim and others,AIR 1984, SC 38, no ground is made out to interfere with the concurrent findings of fact . The petition is,therefore,liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier is hereby vacated.

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